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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. DARRYL L. STUBBLEFIELD, Defendant and Appellant.	B208414 (Los Angeles County Super. Ct. No. BA331629)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jose I. Sandoval, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Darryl L. Stubblefield appeals from the judgment entered following his guilty plea to receiving stolen property, count 1 (Pen. Code, § 496, subd. (a)), his no contest plea to driving under the influence of alcohol or drugs, count 2, a misdemeanor, (Veh. Code, § 23152, subd. (a)), and his admission he suffered a prior conviction of a serious or violent felony within the meaning of the "Three Strikes" law (Pen. Code, §§ 1170.12, subd. (a) through (d) and 667, subds. (b) through (i)). Pursuant to his negotiated plea, five additional counts of receiving stolen property, allegations of eight prior strike convictions, and eight prior prison terms were dismissed. He was sentenced to prison on count 1 to the low term of 16 months, doubled by reason of his prior strike to two years and eight months, and on count 2, he was ordered to serve 180 days in jail with credit given for time served.

Appellant filed a motion to suppress evidence pursuant to Penal Code section 1538.5. The record of the preliminary hearing and the motion to suppress established that on June 28, 2007, at approximately 8:00 a.m., Los Angeles Police Officer Mannie Price was on patrol in a marked patrol vehicle in Los Angeles when he saw appellant make an illegal U-turn. Officer Price signaled for appellant to drive to the curb, which he did, but while appellant and the officer spoke, appellant stated the officer was not the police and drove off. Officer Price had observed that appellant's eyes were red, that he was sweating, and that he was speaking incoherently. When Officer Price walked to his vehicle, appellant stopped his car in front of the officer's, got out of his vehicle, "[s]aid some more things, [and] jumped in the car, and took off." Officer Price followed appellant and radioed over L.A.P.D.'s frequency that he was following "a failure to yield." Officer Deshawn Horton, Officer Price's partner, radioed the same over the Culver City Police Department's frequency.

Officer Price followed appellant as he weaved in and out of traffic. Appellant made a U-turn and drove in the opposite direction. Officer Price observed Culver City police officers, who had heard the broadcast, and motioned to them regarding appellant's car. While appellant was stopped for traffic, Officer Price and Culver City police exited their vehicles and, at gunpoint, apprehended appellant.

Appellant was handcuffed, searched for weapons, and arrested for evasion, reckless driving, and because he was possibly under the influence. Officer Price requested a drug recognition expert to the scene. During a search of appellant incident to his arrest, Officer Price found numerous credit cards and a "couple of I.D.'s" with other people's names on them. Approximately 16 of these items were recovered from appellant's pockets. Officer Price recalled appellant stating something to the effect that he was on his way to the F.B.I. to turn over evidence of a major crime.

While Officer Price prepared appellant's car to be impounded, he observed, inside the car, papers and credit cards with other people's names on them. He believed these items to be evidence of another crime. Officer Price had the vehicle impounded.

When the prosecution called the drug recognition expert to testify, the court indicated, based on the current state of the evidence and Officer Price's testimony that he observed objective symptoms of appellant driving under the influence, that count 2 had been established for purposes of the preliminary hearing and that the witness was not necessary. Additionally, the court stated, under Evidence Code section 352, it was precluding the evidence because it was cumulative and not helpful.

Detective Todd Doyle of the Los Angeles Police Department examined the items removed from appellant's pockets and determined that one of the items, a bank card, had been taken in a theft. Detective Doyle and other officers searched appellant's vehicle at the tow yard and found approximately 75 different items including numerous I.D.'s, bank cards, credit cards, paperwork, and birth records all in other persons' names. He learned that a number of these items had been taken during thefts.

In denying the motion to suppress, the court stated it was not relying on the D.U.I. in justifying the stop or the search. Rather, the court was finding probable cause to arrest appellant for reckless driving or evading, which were either misdemeanors or felonies. The court continued, the offenses for which it found probable cause were greater than infractions, so a search incident to arrest was permitted and properly done.

Appellant's petition for writ of habeas corpus filed in superior court on December 11, 2007, was denied.

Appellant's petition for writ of habeas corpus filed in this court was denied.

Appellant's motion for pretrial discovery pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 was granted. Following an in camera hearing, the court found no discoverable information.

Appellant's demurrer was overruled.

On March 6, 2008, appellant filed a motion to strike prior convictions. On this same date, he filed a second motion to suppress evidence pursuant to Penal Code section 1538.5. At the motion to suppress and pursuant to Penal Code section 1538.5, subdivision (i), the prosecution relied on the transcript of the previous motion. Appellant called as his witness Detective Jay Garacochea of the Culver City Police Department, who testified he never heard a broadcast regarding appellant's failure to yield or reckless driving. Detective Garacochea would have had to leave Culver City frequency and tune in to Los Angeles Police Department frequency. Detective Garacochea became involved in the incident because he saw police car lights and heard sirens. The motion to suppress evidence was denied.

On May 27, 2008, prior to hearing appellant's motion to set aside the information pursuant to Penal Code section 995, the parties indicated they had reached a disposition. Appellant pled to counts 1 and 2 and admitted one strike in return for a sentence of 32 months. The trial court denied appellant's request to be released for two weeks before sentencing.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On October 7, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On

October 28, 2008, he filed a letter listing issues he wished this court to consider.[1] He asserted he was not afforded a full, fair, and adequate preliminary hearing and hearing on his motion to suppress evidence. He asserted the court was inconsistent in finding that the charge of driving under the influence had been established for the purpose of the preliminary hearing but that appellant "was not under the influence in ruling on the [Penal Code section] 1538.5 motion." He asserted relative to count 2, he was illegally committed because the prosecution did not put on any proof or testimony relative to that charge. He additionally asserted Officer Price committed perjury in that he gave false testimony regarding the broadcast.

With regard to claims of irregularities in his preliminary hearing, appellant has forfeited these claims by failing to pursue a motion pursuant to Penal Code section 995. (See *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 990-991.) Further, appellant's pleas admitted all matters essential to his convictions. (See *People v. DeVaughn* (1977) 18 Cal.3d 889, 896.) Regarding appellant's claim that the court was inconsistent in its rulings, the record indicates the court found probable cause to believe appellant was guilty of both of the charged offenses. In response to appellant's argument that a custodial arrest and search were not authorized for infractions, citing *U. S. v. Mota* (9th Cir. 1993) 982 F.2d 1384 and *U.S. v. Parr* (9th Cir. 1988) 843 F.2d 1228, the court stated it was only using the arrest for evading and reckless driving as the basis for appellant's search. As to appellant's claim that Officer Price perjured himself when he testified he was broadcasting over his radio that he was attempting to pull over a vehicle that had failed to yield, the court was aware of the discrepancy in the evidence based on the testimony of Detective Garacochea. The court, however, believed Officer Price when he testified that appellant had made an illegal U-turn and thereafter evaded and failed to yield to the officer.

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[1] On October 30, 2008, appellant also filed a petition for writ of habeas corpus, which was denied on January 22, 2009.

"'An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] "The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review." [Citations.] [¶] The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.' [Citation.]" (*People v. Alvarez* (1996) 14 Cal.4th 155, 182, quoting *People v. Williams* (1988) 45 Cal.3d 1268, 1301; accord, *People v. Ayala* (2000) 23 Cal.4th 225, 255.) Measured against this legal standard, we find the trial court properly denied appellant's motion to suppress evidence.

We have examined the entire record and are satisfied that no arguable issues exist and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J. SUZUKAWA, J.